

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

**IN THE MATTER OF:**

**ELLEN GRAFNER,**

Complainant,

and

**ST. PETER CATHOLIC CHURCH,**

Respondent.

Charge No.: 2006CF0338

EEOC No.: N/A

ALS No.: 07-602

**ORDER**

This matter coming before the Commission pursuant to a Recommended Order and Decision, and the Complainant's Exceptions filed thereto.

The Illinois Department of Human Rights is an additional statutory party that has conducted state action in this matter. They are named herein as an additional party of record. The Illinois Department of Human Rights did not participate in the Commission's consideration of this matter.

**IT IS HEREBY ORDERED:**

1. Pursuant to 775 ILCS 5/8A-103(E)(1) & (3), the Commission has **DECLINED** further review in the above-captioned matter. The parties are hereby notified that the Administrative Law Judge's Recommended Order and Decision, entered on **March 26, 2010** has become the Order of the Commission.

**STATE OF ILLINOIS**

**HUMAN RIGHTS COMMISSION**

Entered this 11<sup>th</sup> day of May 2011.

Commissioner David Chang

Commissioner Marylee V. Freeman

Commissioner Robert A. Cantone

**IN THE MATTER OF:**

**Respondent.**

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**Judge Lester G. Bovia, Jr.**

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no role in the negotiation or payment of an organist's fee for weddings or funerals, Respondent does refer organists to families requesting referrals.

4. Before July 2005, Respondent referred Complainant almost exclusively when families requested organist referrals for weddings and funerals. Starting in July 2005, however, Respondent began referring a male organist for some weddings and funerals.

5. On August 10, 2005, Complainant filed a charge with the Department alleging that Respondent stopped referring her exclusively for weddings and funerals due to unlawful sex discrimination. Respondent denies Complainant's allegations.

#### CONCLUSIONS OF LAW

1. Complainant qualifies as a minister for the purposes of the "ministerial exception" in the Illinois Human Rights Act ("Act"), 775 ILCS 5/2-101(B)(2).

2. The ministerial exception bars Complainant's sex discrimination claim.

3. The Commission has no jurisdiction over this matter.

4. Respondent is entitled to a recommended order of dismissal as a matter of law.

#### DISCUSSION

It is axiomatic that the Commission is empowered to preside over only those matters prescribed by the Act. Davies and Seguin Servs., Inc., IHRC, ALS No. 8977, April 17, 1997. Cases alleging civil rights violations by employers generally fall within the purview of the Act. See 775 ILCS 5/2-102(A). However, the Illinois Legislature carved an exception into the Act for employment relationships between religious institutions and their ministers, which is generally referred to as the "ministerial exception."

Section 2-101(B)(2) provides that the Act's prohibitions regarding employment discrimination do not apply to "any religious corporation . . . with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation . . . of its activities." 775 ILCS 5/2-101(B)(2). In McBride and Ill. Dep't of Human Rights, IHRC, ALS No. 10148, September 17, 1997, the Commission interpreted section 2-



101(B)(2) to exempt from scrutiny all employment decisions by a religious institution involving its ministers. By contrast, employment decisions regarding other employees, such as administrative and maintenance personnel, do not enjoy the same blanket protection. Id. Discriminatory employment decisions involving non-ministers remain actionable under the Act if they are not based on religion. Id.

In this case, the parties agree that Complainant is Respondent's music director and an organist, and that Complainant is not an ordained minister. However, Respondent argues that Complainant's job duties are sufficiently ministerial in nature so as to trigger the Act's ministerial exception. Respondent bases its argument on the role that it believes music plays in Catholic worship, asserting that "[t]he music at mass is an important part of the liturgy, it adds beauty to the liturgy, and is a form of prayer." (Affidavit of Rev. M. Wulsch at 1.) Thus, according to Respondent, the ministerial exception exempts from scrutiny Respondent's decision no longer to refer Complainant exclusively for wedding and funeral performances.

Complainant does not dispute that the Act contains a ministerial exception. Complainant asserts simply that she is no minister. In her affidavit, Complainant avers that Respondent's new pastor has stripped away many of her longtime duties as music director. (Affidavit of Complainant at 1-2.) As a result, she denies that she currently performs all of the allegedly ministerial duties described in her resume and the other materials proffered by Respondent in support of its Motion. (Id.)

While the parties disagree regarding some of Complainant's duties, others are undisputed. For example, Complainant does not deny performing the following tasks described by Respondent: 1) performing hymns and music for masses; 2) selecting the hymns and music that she performs, subject to the pastor's final approval; 3) encouraging the congregation to participate in masses by singing; and 4) performing as an organist at weddings and funerals that

take place at Respondent's parish.<sup>1</sup> (See Affidavit of Complainant at 1-2; see also Affidavit of Rev. M. Wulsch at 1.)

There do not appear to be any previous Commission cases involving an alleged minister with duties similar to Complainant's. There is, however, federal precedent directly on point. When faced with novel questions under the Act, the Commission routinely looks to federal decisions on analogous points of federal law. See, e.g., Anguish and Bank of Dallas City, IHRC, ALS No. S-8728, October 7, 1997; Johnson and Univ. of Ill. at Chicago Med. Ctr., IHRC, ALS No. 8624, July 23, 1997. While not binding on the Commission, federal decisions are persuasive, especially when state law and federal law overlap. Booker and Able Detective Agency, IHRC, ALS No. 9141, April 23, 1999. The Commission has observed that the specific statutory language at issue in this case, section 2-101(B)(2) of the Act, is virtually identical to its federal counterpart in Title VII of the Civil Rights Act of 1964. See Hopkins and Urbana Assembly of God, IHRC, ALS No. 2477(B), March 30, 1988 (applying federal precedent to determine whether section 2-101(B)(2) barred church secretary's religious discrimination claim).

The Fourth, Fifth, and Seventh Circuit Courts of Appeals all have decided cases involving employees similar to Complainant, and all three courts concluded that such employees' discrimination claims were barred by the ministerial exception. For example, in Equal Employment Opportunity Comm'n v. Roman Catholic Diocese of Raleigh, 213 F.3d 795 (4th Cir. 2000), the EEOC brought a gender discrimination action against a cathedral on behalf of Joyce Austin, the director of the cathedral's music ministry and a part-time teacher at the

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<sup>1</sup> Because she is not compensated by Respondent for her performances at weddings and funerals, Complainant argues that those performances should not be considered among her job duties for the purposes of determining whether she is a minister under the Act. Complainant's argument cannot save her discrimination claim for two reasons.

First, Respondent's alleged failure to refer Complainant for all wedding and funeral performances constitutes the adverse job action about which she complains. It is inconsistent and illogical for Complainant to claim that, on the one hand, Respondent's failure to refer her for the performances is an adverse job action but, on the other hand, those performances are not part of her job. Second, even without the wedding and funeral performances, Complainant's remaining job duties in connection with Respondent's music ministry suffice to bring her within the scope of the ministerial exception, for the reasons discussed later.



cathedral's elementary school. Ms. Austin's duties included: 1) assisting in the planning of all parish liturgies; 2) directing the parish choirs; 3) teaching the congregation to actively and vocally participate in the music of the parish; 4) performing music for holidays, weddings, and funerals; and 5) teaching music at the elementary school. Id. at 798. The Fourth Circuit affirmed the district court's dismissal for lack of subject matter jurisdiction due to the ministerial exception. The Fourth Circuit reasoned that "the music ministry and teaching positions at issue [were] ministerial because the positions [were] important to the spiritual and pastoral mission of the church." Id. at 802. The court noted "the undeniable fact that music is a vital means of expressing and celebrating those beliefs which a religious community holds most sacred." Id. The court also observed, and was persuaded by, Ms. Austin's role as "clearly a pivotal figure in most, if not all, aspects of the musical life of the cathedral and school." Id.

Similarly, in Starkman v. Evans, 198 F.3d 173 (5th Cir. 1999), the Fifth Circuit affirmed a summary judgment in favor of a church and its pastor in a disability discrimination lawsuit filed by Melanie Starkman, the church's music director. Ms. Starkman's job duties included planning worship liturgies, coordinating worship services relating to the music ministry, and leading choir performances and rehearsals. Id. at 176. Holding that the ministerial exception barred Ms. Starkman's claim, the Fifth Circuit wrote that the ministerial exception "encompasses all employees of a religious institution, whether ordained or not, whose primary functions serve its spiritual and pastoral mission." Id. Once Ms. Starkman was found to have been a minister, the inquiry ended, and "the defendants [were] not required to advance a theological or religious explanation regarding [their] allegedly illegal employment actions." Id.

Finally, in Tomic v. Catholic Diocese of Peoria, 442 F.3d 1036 (7th Cir. 2006), the Seventh Circuit affirmed the dismissal of an age discrimination lawsuit filed against a church by Richard Tomic, the church's music director and organist. Mr. Tomic's duties included: 1) playing the organ for masses, weddings, and funerals; 2) preparing music in consultation with the pastor; and 3) recruiting, training, directing, and rehearsing the church choir. Id. at 1037. Citing

Starkman, the Seventh Circuit found that Mr. Tomic was a minister because his duties were traditionally regarded as ecclesiastical. Id. at 1041. The court distinguished Mr. Tomic from employees who held non-ecclesiastical positions, noting that “[Mr. Tomic’s] duties, unlike those . . . of the person who tunes the organ [at the church], had a significant religious dimension.” Id.

The federal cases cited above are consistent and persuasive. Since there is no Illinois or Commission precedent to the contrary, those cases should be followed, and they compel the conclusion that Complainant is a minister. When viewed together, Complainant’s undisputed job duties demonstrate that she clearly is a major contributor to, if not primarily responsible for, Respondent’s music ministry. Thus, Complainant’s work certainly furthers Respondent’s spiritual and pastoral mission.

Because Complainant qualifies as a minister, all employment decisions by Respondent involving her enjoy blanket protection from scrutiny under the Act. See McBride, IHRC, ALS No. 10148, September 17, 1997. Therefore, the Commission lacks jurisdiction over Complainant’s sex discrimination claim as a matter of law.

#### RECOMMENDATION

Based on the foregoing, the Commission lacks jurisdiction over this matter, and Respondent is entitled to a recommended order of dismissal as a matter of law. Accordingly, it is recommended that: 1) Respondent’s Motion be granted; and 2) the complaint and underlying charge be dismissed in their entirety with prejudice.

#### **HUMAN RIGHTS COMMISSION**

**BY: \_\_\_\_\_**

**LESTER G. BOVIA, JR.  
ADMINISTRATIVE LAW JUDGE  
ADMINISTRATIVE LAW SECTION**

**ENTERED:** March 26, 2010